

Councils accessing land for materials

Frequently asked questions

Why is this information being provided now?

It is acknowledged that local governments play a critical role in maintaining community infrastructure, including roads, bridges, and public assets. Ensuring reliable access to materials to undertake this responsibility is important, as is safeguarding ownership rights for landholders. Important information has been previously circulated by the Queensland Reconstruction Authority to help local governments access materials to facilitate disaster recovery activities. This information is still relevant and should be considered alongside the fact sheet provided to explain the broader use of section 143 of the *Local Government Act 2009* (LGA).

My council already holds a sales permit under *Forestry Act 1959*, why should I use section 143 of the *Local Government Act 2009* to access quarry materials?

If your council holds a valid sales permit under the *Forestry Act 1959* and the materials available through the sales permit are sufficient to meet your needs, there is no need to use section 143 of the LGA. However, there may be times when a permit does not provide authorisation to access the materials needed by council. In this case, where there is no other reasonably practicable way to obtain the materials, you may continue to access relevant land and remove materials that are required to perform council responsibilities.

What factors do I need to consider regarding the no other reasonably practicable way test?

The assessment of requirement in the legislation will always depend on each council's circumstances and there is no definitive test that can be applied. Some factors that may be considered include:

- whether there is another source for the required materials, for example another quarry with a valid sales permit
- the difference in time and cost between using the alternative source and the source you are considering using
- the impact to the landowner or occupier in accessing and removing materials, and
- the cost to council in compensation to the landowner or occupier.

What is relevant land?

The LGA states that only relevant land can be accessed. This land must be located in the local government area of the council wishing to obtain the material but cannot be:

- the site of, or curtilage around, a home or other structure; or
- a court, lawn, park, planted walk or avenue or yard; or
- under cultivation (including a garden, nursery or plantation, for example); or
- a state forest or timber reserve under the Forestry Act; or
- a protected area under the *Nature Conservation Act 1992*; or
- the wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*.

What materials may be removed from relevant land?

Materials that can be removed are those which the local government requires to perform its responsibilities. For example, soil to fill slippage, quarry rock to repair roads, and timber for construction of local government infrastructure.

Material cannot be searched for, or removed, if it is within 50 metres of any structure or works on the land (including a house, bridge, dam or wharf). Note that there was a drafting error which referred to both rateable and relevant land. This has been rectified in the recent amendments to the LGA.

What procedure do I need to follow to access land under section 143?

While the process will vary under the circumstances, the following is a general guide on key steps:

- Give consideration of the available options to access relevant materials, including the relevant cost and time estimates involved in each option. Estimates should clearly detail cost and time impacts and should be documented to support future assessments and decision making.
- Issue a reasonable entry notice to the owner and occupier of the relevant land within a reasonable period prior to entry with the notice to include who is to enter the property, reason for entering the property and the days and times of the entry. What is a reasonable notice period will depend on the circumstances and urgency in each case. The former requirement to provide 7 days notice no longer applies.
- Give consideration of any compensation to be paid to the owner/ occupier for the materials taken. This may include a calculation of costs relating to cultural value.

Land where native title exists

Land where native title has been determined is not considered protected land and access to the land to obtain

the materials under section 143 of the LGA can occur, provided there is no other reasonably practicable way of obtaining the materials.

What if I am not sure whether I can use section 143?

The onus for demonstrating that there is no reasonably practicable alternative will sit with the council and will depend on the circumstances in each case.

If you are not sure whether your particular circumstances fit within the 'reasonably practicable' test, you may seek your own independent legal advice.